

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 5, 2010)

**DECISION GRANTING PETITION FOR
MODIFICATION OF DECISION 07-09-044****1. Summary**

This decision grants a Petition for Modification of Decision 07-09-044 to eliminate the requirement in that decision to conduct energy auctions for Residual Back-to-Back and Call Option products. The modifications are shown in Attachment 1.

2. Petition

The Joint Petition of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and L. Jan Reid, Coast Economic Consulting (collectively, Joint Parties) for Modification of Decision (D.) 07-09-044 was filed on April 16, 2012. D.07-09-044 adopted a Joint Settlement Agreement (with clarifications) regarding principles for an energy auction process and products. Joint Parties state that all of the

parties to the settlement were consulted and none expressed an objection to this Petition.¹ No party filed in opposition to the Petition.

On September 20, 2007, in D.07-09-044, the Commission adopted the provisions of a Joint Settlement Agreement that set forth the processes and products included in the energy auction established by D.06-07-029. That Decision and the Joint Settlement Agreement required the utilities to obtain an independent evaluator to oversee any energy auction solicitation, evaluation and selection processes. The Joint Settlement Agreement also required that the energy auction include Back-to-Back Toll and Residual Back-to-Back Toll with associated Day-Ahead Unit Contingent Call Option(s) products, “[u]nless a product is found by the Commission to be unfeasible at the time the Commission approves the utility’s application for the Energy Auction PPA, or the Commission otherwise rules that the utility is not required to include a particular product prior to the energy auction.”²

¹ The original settling parties include: SCE, PG&E, SDG&E, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Western Power Trading Forum, the Division of Ratepayer Advocates, L. Jan Reid, J. Aron & Company, The Utility Reform Network, GenOn Energy, Inc. (formerly Mirant Corporation, Mirant California LLC, Mirant Delta, LLC) (GenOn), Alliance for Retail Energy Markets, and Barclays Bank, PLC.

² D.07-09-044, Appendix A (Joint Settlement Agreement) § IV(A) at 4.

Since 2007, SCE has conducted three energy auctions in compliance with the Joint Settlement Agreement and the Decision. To date, PG&E and SDG&E have not conducted any energy auction solicitations under the Decision and Settlement Agreement. No auction participant bid on the Residual Back-to-Back Toll product in any of the SCE auctions. Without any bids on the Residual Back-to-Back Toll products, no Call Options could be selected. Accordingly, after each auction, Sedway Consulting, Inc. (Sedway), the Independent Evaluator retained by SCE, concluded that “an inordinate amount of time, effort, and attention was spent in this Energy Auction on the[] complex [Residual Back-to-Back and Call Option] products for which no parties ultimately bid.”³

Sedway therefore questioned the value of the Residual Back-to-Back / Call Option products in the context of future Energy Auctions and recommended that in future Energy Auctions, SCE, the Commission, and other parties to the settlement agreement may want to consider eliminating these products because a less complex auction might minimize confusion and attract more bidders.

³ See, .e.g., Sedway Consulting, Inc., Independent Evaluation Report for Southern California Edison’s 2010 Blythe Energy Auction (July 27, 2010) at 4; Sedway Consulting, Inc., Independent Evaluation Report for Southern California Edison’s 2010 Long Beach Energy Auction (July 26, 2011) at 4-5 7 *Id.*

Therefore Joint Parties contend that there is no market and likely will never be any market for the Residual Back-to-Back and Call Option products. Joint Parties note that there may be additional products suitable for energy auctions in the future that are currently not contemplated. The Petition does not preclude future modifications for additional energy auction products.

Joint Parties contend they fully complied with the Commission's Rules of Practice and Procedure Rule 16.4(d) because this Petition could not have been presented within one year of the Decision's September 20, 2007 effective date. They contend that several auctions were necessary to conclusively determine that offering the Residual Back-to-Back and Call Option products was an exercise in futility and that modification of the Decision was therefore not only appropriate, but necessary.

SCE contends that it complied with the required auction process. SCE reports that three energy auctions have occurred without any offers for the Residual Back-to-Back and Call Option products, although each auction has resulted in a PPA. The Joint Settlement Agreement provides that "[i]f no energy auction bid is awarded in subsequent energy auctions for an Energy Auction PPA, the stakeholders will meet and attempt to develop a recommendation to the Commission regarding the Energy Auction PPA. If after sixty (60) calendar days the stakeholders are unable to develop a joint recommendation, parties or entities may make separate recommendations to the Commission regarding the Energy Auction PPA."⁴

⁴ D.07-09-044, Appendix A (Joint Settlement Agreement) § VI.

Consistent with the terms of the Joint Settlement Agreement, SCE conducted an auction in June 2011. That auction resulted in a PPA. Nevertheless, in December 2011, SCE contacted the other parties to the Joint Settlement Agreement to propose the joint filing of a petition to modify the Decision to eliminate the products for which there is no market.

3. Discussion

SCE complied with the energy auction process specified under D.07-09-044 by conducting three auctions. PG&E and SDG&E did not conduct such auctions. The Joint Parties have shown that there is no market for the Residual Back-to-Back and Call Option products in energy auctions required under D.07-09-044. The requirement that Residual Back-to-Back and Call Option products should be required in energy auctions required under D.07-09-044 should be eliminated. Therefore, the Petition should be granted.

4. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comments is waived.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and David M. Gamson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.07-09-044 adopted a Joint Settlement Agreement that set forth the processes and products included in the energy auction established by D.06-07-029. D.07-09-044 and the Joint Settlement Agreement required the utilities to obtain an independent evaluator to oversee any energy auction

solicitation, evaluation and selection processes. The Joint Settlement Agreement also required that the energy auction include Back-to-Back Toll and Residual Back-to-Back Toll with associated Day-Ahead Unit Contingent Call Option(s) products, unless a product is found by the Commission to be unfeasible at the time the Commission approves the utility's application for the Energy Auction PPA, or the Commission otherwise rules that the utility is not required to include a particular product prior to the energy auction.

2. SCE conducted three energy auctions under the process specified by D.07-09-044. PG&E and SDG&E did not conduct any such auctions.

3. The three SCE energy auctions did not result in any offers for the Residual Back-to-Back and Call Option products.

4. Several auctions were necessary to conclusively determine that offering the Residual Back-to-Back and Call Option products would result in no bids.

Conclusions of Law

1. SCE complied with the energy auction process specified under D.07-09-044 by conducting three auctions.

2. There is sufficient information to conclude that there is no market for the Residual Back-to-Back and Call Option products in energy auctions required under D.07-09-044.

3. The requirement that Residual Back-to-Back and Call Option products should be required in energy auctions required under D.07-09-044 should be eliminated.

4. This Petition could not have been presented within one year of the Decision's September 20, 2007 effective date.

O R D E R

IT IS ORDERED that:

1. The Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company and L. Jan Reid, Coast Economic Consulting for Modification of Decision 07-09-044 was filed on April 16, 2012 is granted.
2. Decision 07-09-044 is modified as set forth in Attachment 1.
3. Rulemaking 10-05-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment 1**Proposed Modifications to Appendix A of Decision 07-09-044****IV. Energy Auction Product Descriptions****(Pages 4-5)**

A. Unless a product is found by the Commission to be infeasible at the time the Commission approves the utility's application for the Energy Auction PPA, or the Commission otherwise rules that the utility is not required to include a particular product prior to the energy auction, the energy auction for each Energy Auction PPA shall include ~~the following proposed products:~~ (1) a Back-to-Back Toll ~~(described below in Section IV.B); and (2) a Residual Back-To-Back Toll with associated Day Ahead Unit Contingent Call Option(s) (described below in Section IV.C).~~ In addition, the utility may offer as a product: (1) novation (described in Section IV.D below); or (2) any other Commission approved product(s) (as described in Section IV.E below).

Pages 9-17**~~C. Residual Back-to-Back Toll with Associated Day Ahead Unit Contingent Call Option(s)~~****~~1. Description of the Joined Products~~**

~~a. This joined product will result from two concurrent auctions for an Energy Auction PPA resource: (i) an auction for Day Ahead Unit Contingent Call Options; and (ii) an auction for a Residual Back-to-Back Toll.~~

~~b. The Residual Back-to-Back Toll and associated Day Ahead Unit Contingent Call Options are to be auctioned concurrently. The award of Day Ahead Unit Contingent Call Options is contingent on the award of a joined Residual Back-to-Back Toll bid.~~

~~c. No Day Ahead Unit Contingent Call Option shall be awarded unless there is a successful Residual Back-to-Back Toll bid for the identical contract term and energy product.~~

~~2. Residual Back-to-Back Toll~~

~~a. **Parties:** Parties to the Residual Back-to-Back Toll are the utility and the successful Residual Back-to-Back Toll bidder ("Residual Back-to-Back Toll holder").~~

~~b. **Summary of the Product:** The Residual Back-to-Back Toll transfers the same dispatch rights, operational constraints, gas supply requirements, performance/availability incentives, penalties, and avoidable cost payments in the Energy Auction PPA to the Residual Back-to-Back Toll holder for a specified period of time, subject to the obligations of the Day Ahead Unit Contingent Call Options auctioned concurrently. The Residual Back-To-Back Toll holder will be responsible for ensuring that resource adequacy capacity obligations that would have been the responsibility of the utility under the Energy Auction PPA are satisfied.~~

~~c. **Residual Back-to-Back Toll Size:** Because of operational constraints, such as minimum load requirements, minimum run times, ramp rates and loading dependent heat rates, the energy rights for the entire Energy Auction PPA will be auctioned through a matching Residual Back-to-Back Toll. A single Energy Auction PPA will not be disaggregated into multiple, or smaller sized Residual Back-to-Back Tolls.~~

~~d. **Residual Back-to-Back Toll Bids And Product Terms:** Residual Back-to-Back Toll bidders may submit separate bids for various combinations of product structures and terms that are offered in the concurrent Day Ahead Unit Contingent Call Option auction. However, the Residual Back-to-Back Toll is for all hours during the term of the Residual Back-To-Back Toll, not just the hours corresponding to the Day Ahead Unit Contingent Call Option.~~

~~e. **Bids for Residual Back-to-Back Tolls:** Residual Back-to-Back Toll bids may be positive or negative.~~

~~f. **Scheduling Coordinator and Fuel Manager:** The Residual Back-to-Back Toll holder will be responsible for providing the Scheduling Coordinator (as that term is defined in the CAISO Tariff) service and fuel manager for the Energy Auction PPA, and shall be subject to the obligations of any awarded Day-Ahead Unit Contingent Call Options.~~

~~g. **Settlement Activities:** The Residual Back-to-Back Toll holder will be required to provide the utility with information necessary to allow the utility to settle with the Energy Auction PPA generator, in a format specified by the utility.~~

~~h. **Delivery Point:** The Residual Back-to-Back Toll delivery point shall be consistent with the delivery point in the Energy Auction PPA.~~

~~i. **Payments Under Energy Auction PPA and Residual Back-to-Back Toll:** The following provides an overview of the revenue and payment streams associated with a Residual Back-to-Back Toll, subject to the Final Bid Documents. The utility will make fixed and avoidable cost payments to the generator as required under the Energy Auction PPA. The Residual Back-to-Back Toll holder will make two payments to the utility: (1) the total amount of the option premiums from all Day Ahead Unit Contingent Call Option holder(s); and (2) an avoidable cost payment which is intended to equal the avoidable cost payment made from the utility to the generator under the Energy Auction PPA. The specific payments will be specified in the Residual Back-to-Back Toll. In addition, the Residual Back-to-Back Toll holder will make a fixed payment to the utility or receive a fixed payment from the utility consistent with the Residual Back-to-Back Toll bid.² The~~

² An illustrative diagram is included as Attachment 1.

~~Residual Back-to-Back Toll holder must make all of the foregoing payments to the utility notwithstanding nonpayment or other default by a Day Ahead Unit Contingent Call Option holder.~~

~~j. **Default and Termination:** The default and termination provisions for the Residual Back-to-Back Toll and Day Ahead Unit Contingent Call Options shall be specified in the Final Bid Documents. The Final Bid Documents shall: (1) include default and termination provisions that do not result in additional costs and risks to the utility, relative to the Residual Back-to-Back Toll, than the utility would have otherwise incurred under the Energy Auction PPA; (2) provide for a proportional allocation to the Residual Back-to-Back Toll holder of proceeds that the utility receives from a defaulting generator under the Energy Auction PPA, provided the Residual Back-to-Back Toll requires a distribution of such proceeds; and (3) provide for a proportional allocation to the Day Ahead Call Option holder of proceeds that the Residual Back-to-Back Toll holder receives as a result of a generator default under the Energy Auction PPA, provided that the Day Ahead Unit Contingent Call Option requires a distribution of such proceeds. The following provides a general overview of the default and termination provisions associated with a Residual Back-to-Back Toll and the Day Ahead Unit Contingent Call Option:~~

~~(1) Generator Default of Energy Auction PPA:~~

~~(a) Energy Auction PPA Default: A generator default event which does not result in a termination of the Energy Auction PPA is not a utility default under the Residual Back-to-Back Toll and does not terminate the Residual Back-to-Back Toll. The impact of a generator default flows through from the utility to the Residual Back-to-Back Toll holder, including both the harm and~~

any applicable remedy received from the generator to cure the default.

(b) Energy Auction PPA Termination:

(i) If the Energy Auction PPA terminates as a result of generator default, the Residual Back-to-Back Toll terminates as well. However, if the Energy Auction PPA includes a step-in right, and the utility elects to step-in, termination of the Energy Auction PPA will not result in termination of the Residual Back-to-Back Toll.

(ii) If the Energy Auction PPA terminates as a result of generator default and the Residual Back-to-Back Toll terminates, either the utility or the Residual Back-to-Back Toll holder will make a payment to the other, based on a market valuation as provided in the Residual Back-to-Back Toll.

(iii) If the Energy Auction PPA terminates as a result of generator default and the Residual Back-to-Back Toll terminates, in accordance with the terms of the Residual Back-to-Back Toll, the utility shall include in the calculation of damages that it provides to the generator the Residual Back-to-Back Toll holder's calculation of damages if the Energy Auction PPA allows the utility to include the Residual Back-to-Back Toll holder's calculation of damages. If the Energy Auction PPA does not allow the utility to include the Residual Back-to-Back Toll holder's calculation of damages and requires the use of reference market makers, at the Residual Back-to-Back Toll

~~holder's option the utility shall include the Residual Back to Back Toll holder as one of the reference market makers to the extent allowed under the Energy Auction PPA.~~

~~(2) Residual Back to Back Toll Holder Default:~~

~~(a) Default: The Residual Back to Back Toll will include standard default and cure language.~~

~~(b) Termination: The Residual Back to Back Toll will include standard termination language which will base the payment between the Residual Back to Back Toll holder and the utility on the remaining market value of the Residual Back to Back Toll at the time of the termination.~~

~~(3) Utility Default of Energy Auction PPA:~~

~~(a) Default: The Residual Back to Back Toll will include provisions for cure and/or remedy of a utility default under the Energy Auction PPA if the utility default impacts the Residual Back to Back Toll holder.~~

~~(b) Termination: The Residual Back to Back Toll will include standard termination language which will base the payment between the Residual Back to Back Toll holder and the utility on the remaining market value of the Residual Back to Back Toll at the time of the default.~~

~~(4) Utility Default of Residual Back to Back Toll:~~

~~(a) Default: The Residual Back to Back Toll will include provisions for cure and/or remedy of a utility default under the Residual Back to Back Toll.~~

~~(b) Termination: The Residual Back-to-Back Toll will include standard termination language which will base the payment between the Residual Back-to-Back Toll holder and the utility on the remaining market value of the Residual Back-to-Back Toll at the time of the default.~~

~~(5) Day Ahead Unit Contingent Call Option Default: If a Day Ahead Unit Contingent Call Option holder defaults and the Residual Back-to-Back Toll holder terminates the Day Ahead Unit Contingent Call Option, the Residual Back-to-Back Toll holder has the obligation to assume the Day Ahead Unit Contingent Call Option. In such case, the Residual Back-to-Back Toll holder's calculation of the termination amount will include the costs of the assumption of the Day Ahead Unit Contingent Call Option.~~

~~(6) Utility Voluntary Termination of Energy Auction PPA: If the utility voluntarily terminates the Energy Auction PPA, the utility will make a termination payment to the Residual Back-to-Back Toll holder based on a market valuation as provided in the Residual Back-to-Back Toll.~~

~~(7) Notice Provisions for Potential Default or Termination: The utility will provide reasonable notice to the Residual Back-to-Back Toll holder of any default under or termination of the Energy Auction PPA, or notice of a pending default if notice of a pending default is provided for under the Energy Auction PPA.~~

~~(8) If the Residual Back-to-Back Toll terminates, the Day Ahead Unit Contingent Call Option(s) also terminate.~~

~~k. **Credit and Collateral**: The Final Bid Documents will specify for the Residual Back-to-Back Toll standard credit and~~

~~collateral terms. The energy auction will also include a pre-bid qualification process in which the utility and potential Residual Back-to-Back Toll bidders will seek to resolve any credit and collateral issues to ensure that Residual Back-to-Back Toll bidders are qualified to meet the credit and collateral requirements. To the extent that the Utility has collateral posted to it by the generator, the Utility shall post a proportional share of such collateral to the Residual Back-to-Back Toll holder to the extent collateral is required under the Residual Back-to-Back Toll. Qualifying Residual Back-to-Back Toll bidders must have an executed master agreement in place with the utility.~~

~~3. Day Ahead Unit Contingent Call Options Joined to a Residual —Back-to-Back Toll~~

~~a. **Parties:** Parties to the Day Ahead Unit Contingent Call Option are the Residual Back-to-Back Toll holder and the successful Day Ahead Unit Contingent Call Option bidder(s) ("Day Ahead Unit Contingent Call Option holder(s)"). The utility shall not have any obligations under the Day Ahead Unit Contingent Call Option nor shall the utility have any obligations to the successful Day Ahead Unit Contingent Call Option holder(s).~~

~~b. **Summary of the Product:** The Day Ahead Unit Contingent Call Option holder receives the right, but not the obligation, to take energy and pay a price based on a pre-determined contract heat rate and index gas price plus transportation. The Day Ahead Unit Contingent Call Option is for a fixed quantity for relatively standard, non-overlapping and predetermined time blocks (e.g., peak, off-peak, super-peak, etc.), subject to the characteristics of the unit being tolled. The Final Bid Documents shall specify the Day Ahead Unit Contingent Call Options that may be bid for a particular energy auction.~~

~~c. **Unit-Contingent Product:** The Day-Ahead Unit Contingent Call Option is unit contingent, provided, however, that the Residual Back-to-Back Toll holder may, at its option, supply the Day-Ahead Unit Contingent Call Option holder from either the Energy Auction PPA resource or the market. If the Energy Auction PPA resource is not available, the Residual Back-to-Back Toll holder has no obligation to deliver the energy associated with the option and can cut the schedule intra-day. The Final Bid Documents will address circumstances where the Energy Auction PPA is partially available.~~

~~d. **Product Term:** The Final Bid Documents shall specify the term(s) that may be bid for the Day-Ahead Unit Contingent Call Option product in a particular auction. For example, an energy auction may solicit Day-Ahead Unit Contingent Call Option bids of two years, three years, four years, five years, and/or balance of Energy Auction PPA term not to exceed five years, all of which shall commence on the same date. The utility is not required to offer all of these terms in an energy auction.~~

~~e. **Scheduling Coordinator and Fuel Manager:** With respect to the Energy Auction PPA resource, the Residual Back-to-Back Toll holder will be responsible for providing the Scheduling Coordinator (as that term is defined in the CAISO Tariff) service and fuel manager and provide the dispatch instructions to the plant operations manager.~~

~~f. **Delivery Point:** The Day-Ahead Unit Contingent Call Option delivery point shall be consistent with the delivery point specified in the Energy Auction PPA, provided that the Day-Ahead Unit Contingent Call Option holder may specify an alternate delivery point if it agrees to pay the Residual Back-to-Back Toll holder all costs associated with delivery to the alternate delivery point.~~

~~g. **Contract Heat Rates:** Contract heat rates for Day-Ahead Unit Contingent Call Options may correspond to the heat rate of a particular generating unit or for the heat rates of a portfolio of generating units, and may be adjusted to include start-up costs, variable costs, and other energy related costs in an Energy Auction PPA. The contract heat rate(s) for a Day-Ahead Unit Contingent Call Option shall be established in the Final Bid Documents.~~

~~h. **Day-Ahead Unit Contingent Call Option Size:** The total MW quantity auctioned shall match the underlying Energy Auction PPA MW quantity. The minimum bid size shall not be less than 25 MW and consideration shall be given to the operational attributes of the underlying Energy Auction PPA resource.~~

~~i. **Payments Under Day-Ahead Unit Contingent Call Option:** The following provides an overview of the revenue and payment streams associated with a Day-Ahead Unit Contingent Call Option. A Day-Ahead Unit Contingent Call Option holder makes two payments to the Residual Back-to-Back Toll holder: (1) the option premium; and (2) a strike price payment if the holder exercises the option on a given day.³~~

~~j. **Default and Termination:** Default and termination provisions related to the Day-Ahead Unit Contingent Call Option are discussed in Section IV.C.2.j, above.~~

~~k. **Credit and Collateral:** The Final Bid Documents will specify for the Day-Ahead Unit Contingent Call Option standard credit and collateral terms.~~

³ An illustrative diagram is included as Attachment 1.